

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRIAN WHITAKER,

Plaintiff,

v.

KEVIN JEWELERS, INC.,

Defendant.

Case No. 1:20-cv-01831-JLT-CDB

**SCHEDULING ORDER** (Fed. R. Civ. P. 16)

Discovery Deadlines:

Initial Disclosures: December 15, 2022

Non-Expert: October 30, 2023

Expert: November 20, 2023

Mid-Discovery Status Conf.: July 10, 2023

Non-Dispositive Motion Deadlines:

Filing: September 11, 2023

Hearing: On or before October 16, 2023

Dispositive Motion Deadlines:

Filing: November 6, 2023

Hearing: On or before December 18, 2023

Pre-Trial Conference: January 26, 2024

at 1:30 p.m.

2500 Tulare Street, Fresno, CA

Trial: February 12, 2024, at 8:30 a.m.

2500 Tulare Street, Fresno, CA

Jury trial: 2-3 days

1 Plaintiff filed the complaint in this action on December 30, 2020, seeking relief pursuant to 42  
2 U.S.C. § 12101, *et seq* and Cal. Civ. Code § 51-53. A Schedule Conference before the undersigned  
3 was convened on December 12, 2022. Krista Renee Hemming appeared on behalf of Plaintiff and Ara  
4 Sahelian appeared on behalf of Defendant.

5 **I. Pleading Amendment Deadline**

6 Any requested pleading amendments are ordered to be filed, either through a stipulation or  
7 motion to amend.

8 **II. Fictitiously-Named Defendants**

9 All claims as to “Doe” Defendants, including any counterclaims and cross-claims, are hereby  
10 **Dismissed.**

11 **III. Discovery Plan and Cut-Off Date**

12 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)  
13 on or before **December 15, 2022.**

14 The parties are ordered to complete all discovery pertaining to non-experts on or before  
15 **October 30, 2023**, and all discovery pertaining to experts on or before **November 20, 2023.**

16 The parties are directed to disclose all expert witnesses, in writing, on or before **September 8,**  
17 **2023**, and to disclose all rebuttal experts on or before **September 25, 2023.** The written designation of  
18 retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),  
19 and (C) and shall include all information required thereunder. Failure to designate experts in  
20 compliance with this order may result in the Court excluding the testimony or other evidence offered  
21 through such experts that are not disclosed pursuant to this order.

22 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to  
23 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions  
24 included in the designation. Failure to comply may result in the imposition of sanctions, which may  
25 include striking the expert designation and preclusion of expert testimony.

26 The provisions of Fed. R. Civ. P. 26(e) regarding a party’s duty to timely supplement  
27 disclosures and responses to discovery requests will be strictly enforced.  
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1 A mid-discovery status conference is scheduled for **July 10, 2023**, at 9:00 a.m. before  
2 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference  
3 report no later than **one week before the conference**. Counsel also SHALL lodge the status report via  
4 e-mail to CDBorders@caed.uscourts.gov. The joint report SHALL outline the discovery counsel have  
5 completed and that which needs to be completed as well as any impediments to completing the  
6 discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify  
7 in the joint status report (1) that they have met/conferred regarding settlement, and (2) proposed dates  
8 for convening a settlement conference with Magistrate Judge Baker.

9 **IV. Pre-Trial Motion Schedule**

10 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later  
11 than **September 11, 2023**,<sup>1</sup> and heard on or before **October 16, 2023**. The Court hears non-  
12 dispositive motions at 10:30 a.m. at the United States District Courthouse in Bakersfield, California.

13 No motion to amend or stipulation to amend the case schedule will be entertained unless it is  
14 filed at least one week before the first deadline the parties wish to extend. Likewise, no written  
15 discovery motions shall be filed without the prior approval of the Court. A party with a discovery  
16 dispute must first confer with the opposing party in a good faith effort to resolve by agreement the  
17 issues in dispute. If that good faith effort is unsuccessful, the moving party promptly shall seek a  
18 telephonic hearing with all involved parties and Magistrate Judge Baker. To schedule this telephonic  
19 hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at (661) 326-6620  
20 or via email at SHall@caed.uscourts.gov. At least three days before the conference, counsel SHALL  
21 file informal letter briefs detailing their positions. The briefs may not exceed 7 pages, excluding  
22 exhibits. Counsel must comply with Local Rule 251 with respect to discovery disputes.

23 All dispositive pre-trial motions shall be filed no later than **November 6, 2023**, and heard on or  
24 before **December 18, 2023**. In scheduling such motions, absent consent to Magistrate Judge  
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27 <sup>1</sup> Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time  
28 of discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery  
deadline.

jurisdiction, counsel SHALL consult the assigned District Judge's general information and calendar accordingly, and SHALL comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.

**V. Motions for Summary Judgment or Summary Adjudication**

At least 21 days before filing a motion for summary judgment or motion for summary adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be raised in the motion.

The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the issues for review by the court; 5) explore the possibility of settlement before the parties incur the expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

The moving party SHALL initiate the meeting and SHALL provide a complete, proposed statement of undisputed facts **at least five days before** the conference. The finalized joint statement of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint statement of undisputed facts.

In the notice of motion, the moving party SHALL certify that the parties have met and conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer. Failure to comply may result in the motion being stricken.

**VI. Pre-Trial Conference**

**January 26, 2024**, at 1:30 p.m., located at the United States District Courthouse, 2500 Tulare Street, in Fresno, California, before District Judge Jennifer L. Thurston.

The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The parties are further directed to submit a digital copy of their pretrial statement in Word format, directly to District Judge Thurston's chambers, by email at JLTorders@caed.uscourts.gov.

Counsels' attention is directed to Rules 281 and 282 of the Local Rules for the Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules,

1 the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to  
2 explain the nature of the case to the jury during voir dire.

3 **VII. Trial Date**

4 **February 12, 2024**, at 8:30 a.m., located at the United States District Courthouse, 2500 Tulare  
5 Street, in Fresno, California, before District Judge Jennifer L. Thurston.

- 6 A. This is a jury trial.
- 7 B. Counsels' Estimate of Trial Time: 2-3 days.
- 8 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of  
9 California, Rule 285.

10 **VIII. Settlement Conference**

11 The parties SHALL meet and confer and notify the Court prior to the Pre-Trial Conference  
12 whether they wish to convene a Settlement Conference. In the event the parties request a Settlement  
13 Conference, unless otherwise permitted in advance by the Court, the attorneys who will try the case  
14 shall appear at the settlement conference **with the parties** and the person or persons having full  
15 authority to negotiate and settle the case on any terms<sup>2</sup> at the conference. Consideration of settlement  
16 is a serious matter that requires preparation prior to the settlement conference. Set forth below are the  
17 procedures the Court will employ, absent good cause, in conducting the conference.

18 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to  
19 Defendant via fax or e-mail, a written itemization of damages and a meaningful<sup>3</sup> settlement demand  
20 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than  
21 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an  
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23 <sup>2</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement  
24 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like  
25 shall be represented by a person or persons who occupy high executive positions in the party organization and  
26 who will be directly involved in the process of approval of any settlement offers or agreements. To the extent  
possible, the representative shall have authority, if he or she deems it appropriate, to settle the action on terms  
consistent with the opposing party's most recent demand.

27 <sup>3</sup> "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the  
28 offering party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to  
the other party. If, however, the offering party is only willing to offer a settlement which it knows the other party  
will not accept, this should trigger a recognition the case is not in a settlement posture and the parties should  
confer about continuing or vacating the settlement conference via stipulation.

1 acceptance of the offer or with a meaningful counteroffer which includes a brief explanation of why  
2 such a settlement is appropriate.

3 If settlement is not achieved, each party SHALL attach copies of their settlement offers to their  
4 Confidential Settlement Conference Statement, as described below. Copies of these documents shall  
5 not be filed on the court docket.

6 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

7 At least five court days prior to the settlement conference, the parties shall submit, directly to  
8 Magistrate Judge Baker's chambers by e-mail to CDBOrders@caed.uscourts.gov, a Confidential  
9 Settlement Conference Statement. The statement should not be filed with the Clerk of the Court nor  
10 served on any other party, although the parties may file a Notice of Lodging of Settlement Conference  
11 Statement. Each statement shall be clearly marked "confidential" with the date and time of the  
12 settlement conference indicated prominently thereon.

13 The Confidential Settlement Conference Statement shall include the following:

- 14 A. A brief statement of the facts of the case.
- 15 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
16 which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the  
17 claims and defenses; and a description of the major issues in dispute.
- 18 C. A summary of the proceedings to date.
- 19 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 20 E. The relief sought.
- 21 F. The party's position on settlement, including present demands and offers and a history  
22 of past settlement discussions, offers and demands.

23 **IX. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**  
24 **Trial**

25 Not applicable at this time.

26 **X. Related Matters Pending**

27 There are no pending related matters.

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**XI. Compliance with Federal Procedure**

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of the Eastern District of California, and to keep abreast of any amendments thereto. The Court requires compliance with these Rules to efficiently handle its increasing case load.

**XII. Effect of this Order**

The foregoing order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

**The dates set in this Order are considered to be firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines contained herein will not be considered unless they are accompanied by affidavits or declarations, and where appropriate attached exhibits, which establish good cause for granting the relief requested.**

Failure to comply with this order may result in the imposition of sanctions.

IT IS SO ORDERED.

Dated: **December 12, 2022**

  
UNITED STATES MAGISTRATE JUDGE